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Wisconsin Department of Transportation

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Governor

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October 29, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

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Subject: MM Docket No. 97-182, Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities.

To Whom it May Concern:

The Wisconsin Department of Transportation is strongly opposed to the Federal Communication Commission's (FCC) adoption of a rule that will preempt state laws and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities. The Department opposes this proposed rule on the grounds that it will result in new hazards to aerial operations, aircraft, and passengers in the United States.

The proponents of Digital Television (DTV) have petitioned the FCC for the above referenced Notice of Proposed Rule Making (NPRM) that would essentially circumvent well established state laws and local zoning protection for airports in Wisconsin and throughout the United States. The accelerated implementation of DTV should not be accomplished at the expense of the safety of the flying public and the ability of state and local governments to encourage compatible land use practices around airports.

Airports in Wisconsin and throughout the country are constantly threatened by the encroachment of the approach and departure slopes by towers or other obstructions which are incompatible with the safe and efficient operation of the airport. Obstructions can be caused by terrain, buildings, towers and trees or any object that penetrates the navigable airspace around the airport. Penetrations to navigable airspace may cause unsafe operating conditions at an airport. The use of state and local zoning and land use authority is the primary deterrent to the development of these unsafe conditions. Adoption of the FCC's proposed zoning preemption rule will unnecessarily deprive state and local governments of an important part of their ability to regulate land use and development around airports.

Federal Aviation Regulation (FAR) Part 77, CFR 14, "Objects Affecting Navigable Airspace" establishes standards for determining obstructions to air navigation. However, the Federal

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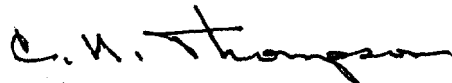
Aviation Act of 1958 , which ultimately generated (FAR) Part 77, does not provide specific authority to the Federal Aviation Administration (FAA) to regulate or control how land may be used involving tall structures or obstructions that may penetrate the navigable airspace around an airport. Therefore, the FAA has no power to enforce obstruction standards.

In 1945, Tall Tower/Structure legislation was enacted in Wisconsin to assist local governments in enacting and enforcing compatible land use around airports in the State. There are now 26 other states, plus Puerto Rico, that have enacted similar Tall/Tower Structure legislation. These states have adopted these regulations specifically because the federal government chose not to exercise this zoning authority. Since the federal government has no power to enforce the obstruction standards in (FAR) Part 77, it is essential that states and local authorities maintain their ability to regulate tall structures.

In Wisconsin and other states, local zoning ordinances and land use restrictions are the only means to enforce and limit the height of tall structures that are obstructions to aerial navigation near airports. The Wisconsin Department of Transportation encourages local governments to adopt ordinances and land-use codes to ensure public safety and protect the taxpayer investment in our statewide system of airports. We strongly urge the Federal Communications Commission to deny the proposed preemption rule and allow the established state and local regulations to remain effective. This will preserve the vital roles of state and local governments in zoning and land use regulation around airports.

Thank you for the opportunity to comment on this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "C. H. Thompson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Charles H. Thompson
Secretary